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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,047	11/26/2003	Patrick C. Joyce	482.140	9085

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EXAMINER
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DRODGE, JOSEPH W

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,047	<b>Applicant(s)</b> JOYCE ET AL.	
	<b>Examiner</b> Joseph W. Drodge	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 13-15, 17-19, 27-36, 44-47, 51-53 and 61-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12, 16, 20-26, 37-43, 48-50 and 54-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1103</u> . | 6) <input type="checkbox"/> Other: ____.  |

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 7-11,13-15,17-19,27-36,44-47,51-53 and 61-64.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-60, drawn to a liquid treatment system, classified in class 210, subclass 94.
- II. Claims 61-64, drawn to a method of determining substantial target contaminant removal, classified in class 210, subclass 745.

The inventions are independent or distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus can be practiced utilizing only a single indicator element in a simplified system, not requiring plural indicator elements and comparison of color changes between two indicator elements, as recited in the more complex method.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

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Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species: Species 1, claim 5 (a pitcher); Species 2, claim 7 (a refrigerator); Species 3, claim 8 (a water cooler); Species 4, claims 9 and 10 (a drinking bottle); Species 5, (a beverage making-device); claims 9 and 10; Species 6 (an indicator attached to wall of a container), claims 13 and 17; Species 7 (an indicator attached to a filter), claims 14,18; Species 8 (a freely movable indicator), claims 15 and 19; Species 9 (plural filter components with an intervening layer), claims 27-36; Species 10 (a color-changing Agent coated with a water-soluble cover material), claims 44-47; Species 11 (water faucet), claim 51; Species 12 (an under-the-counter device), claim 52; and Species 13, (a counter-top system), claim 13. The species are independent or distinct because they require distinctly different searches in different class and subclass combinations and have independent and unrelated unique device components and features.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-4,6,12,16,20-26,37-43,48-50 and 54-60 are deemed generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

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readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

During a telephone conversation with Stacey Combs on 2/21/2006 a provisional election was made with traverse to prosecute the invention of Group I, Species 1, claim 5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7-11,13-15,17-19,27-36,44-47,51-53 and 61-64 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Generic claims to all the Species of Group I, claims 1-4,6,12,16,20-26,37-43,48-50 and 54-60 will also be examined along with the elected Group and Species.

Claims 2,3,24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of these claims "sufficient liquid flow rate" is vague and indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-6,12,16,20-23,26,37,38,40-42,48,49,54, and 56-59, are rejected under 35 U.S.C. 102(b) as being anticipated by Eger et al patent 4,998,228.

Eger et al disclose the following: for claims 1,12,20 and 48-50, container 14 and filter device 44,38 including a component 70,72 giving capability of giving visual indication of contaminant exposure (column 6, lines 20-24), and gravity flow (column 2, lines 30-32); for claim 4, 2<sup>nd</sup> container (22 or 20, see column 2, lines 66-68) to receive liquid; for claims 5 and 6, water pitcher/dispenser (column 4, line 2); for claims 12,48,54 and 38, also agent that undergoes a color-change reaction; for claim 16, 2<sup>nd</sup> indicator element (column 6, lines 15-20 concerns 1<sup>st</sup> pigmented surface 76 and pigmented indicating fluid 72) in 2<sup>nd</sup> liquid container 28; for claims 21,22 and 56, transparent container of material such as glass (column 5, lines 27-31); for claim 23, purifying of water (column 5, line 10); for claims 26 and 37, contaminant particles are removed (column 5, line 2); for claims 40-42 and 57-59 either inorganic materials or organic contaminants such as bacteria are removed (column 5, lines 1-15).

Claims 1,4,6,12,16,20-23,26,37,38,40,48-50 and 54,56 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Lang patent 4,770,768.

Lang discloses the following: for claims 1,12,20 and 48-50, container 28 or 90 and filter device 110,120,130 including capability of giving visual indication of contaminant exposure (column 5, lines 21-29), and gravity flow (from upper filter 110 to lower filter material 102 (column 4, lines 52-54); for claim 4, 2<sup>nd</sup> container to receive

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liquid (base 58,60); for claim 6, dispenser outlet 26; for claims 12,48,54 and 38, also agent that undergoes a color-change reaction (column 5, lines 21-24); for claim 16, 2<sup>nd</sup> indicator element 126 in 2<sup>nd</sup> outer liquid container 56; for claims 21,22 and 56, transparent container inherently of material such as glass (column 3, lines 18-19); for claim 23, purifying of water (column 1, line 68) ; for claims 26 and 37, contaminant particles are removed (column 5, line 23) ; for claims 40 and 57 inorganic materials or contaminants such as bacteria are inherently removed (the filter material may comprise activated charcoal with bacteria trapping capacity), and for claim 50, pressure-driven flow, since the filter device is part of a faucet system that is coupled to home plumbing which inherently includes water supplied under pressure (column 1, lines 27-30).

Claims 1,12,16,20-23,26,37-40,48,49 and 54-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Belz et al patent 5,076,912.

Belz et al disclose the following: for claims 1,12,20 and 48-50, container 1 and filter device 2,3, ( and column 3, lines 59-69) including capability of giving visual indication of contaminant exposure (column 3, lines 1-24), and gravity flow (column 1, lines 11-13); for claims 12,48,54 and 38, also agent that undergoes a color-change reaction (basic and/or acid ion exchangers/ column 3, lines 19-24); for claim 16, 2<sup>nd</sup> indicator element (column 3, lines 23-25 discloses both basic and acid color-changing ion exchange indicators) in 2<sup>nd</sup> liquid container (see column 4, lines 11-17 concerning various nested containers); for claims 21,22 and 56, transparent container inherently of material such as glass (column 2, lines 25-26); for claim 23, purifying of water (column 1, line 16) ; for claims 26 and 37, contaminant particles are removed (column 1, lines



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20-23) ; for claims 40 and 57 inorganic materials or contaminants such as bacteria are inherently removed by filtering material containing sterilizing agents ( also see column 1, lines 24-26). Also, for claims 39 and 55, the color-changing agent(s) comprise ion exchange materials which are dispersed within filter material (the ion exchanging and color-changing material is bonded onto the exchangers themselves which is dispersed within filter material (column 2, lines 44-48 and column 4, lines 23-28).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2,3,24,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Hou et al patent 6,565,749. These claims differ from Lang in requiring a low head pressure of less than 1.0 or 0.5 psi. during a filtering flow rate. However, Hou et al teach such head pressure for a water filtering device (column 6, lines 15-22). It would have been obvious to one of ordinary skill in the art at the time of the invention to have operated or constructed the Lang device to have such low head pressure as taught by Hou et al, in order to dispense drinking water at a suitable flow rate to consumers.

Claims 41-43 and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Norton patent 5,290,443. These claims differ from Lang in requiring the faucet filter to be capable of removing organic materials comprising bacteria or viruses. However, Norton teaches filtering of such contaminants using a faucet filter (column 3, lines 36-44, etc.). It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized filtering materials capable of removing bacteria and viruses from the water being dispensed by the faucet in the Lang device as taught by Hou et al, in order to protect the health of consumers of the dispensed water.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moore patent 4,271,015 is made of record for recitation of a replaceable faucet filter having a color-change indicator attached to an end surface of the filter element.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

February 27, 2006

  
JOSEPH DRODGE  
PRIMARY EXAMINER